(2) *Grounds of removal.* Nothing shall prohibit the Service from removing from the United States an alien classified pursuant to section 101(a)(15)(S) of the Act for conduct committed after the alien has been admitted to the United States as an S nonimmigrant, or after the alien's change to S classification, or for conduct or a condition undisclosed to the Attorney General prior to the alien's admission in, or change to, S classification, unless such conduct or condition is waived prior to admission and classification. In the event the Commissioner decides to remove an S nonimmigrant from the United States, the Assistant Attorney General, Criminal Division, and the relevant LEA shall be notified in writing to that effect. The Assistant Attorney General, Criminal Division, shall concur in or object to that decision. Unless the Assistant Attorney General, Criminal Division, objects within 7 days, he or she shall be deemed to have concurred in the decision. In the event of an objection by the Assistant Attorney General, Criminal Division, the matter will be expeditiously referred to the Deputy Attorney General for a final resolution. In no circumstances shall the alien or the relevant LEA have a right of appeal from any decision to remove.

[29 FR 15252, Nov. 13, 1964, as amended at 30 FR 12330, Sept. 28, 1965; 31 FR 10413, Aug. 3, 1966; 32 FR 15469, Nov. 7, 1967; 35 FR 3065, Feb. 17, 1970; 35 FR 7637, May 16, 1970; 40 FR 30470, July 21, 1975; 51 FR 32295, Sept. 10, 1986; 53 FR 40867, Oct. 19, 1988; 60 FR 44264, Aug. 25, 1995; 60 FR 52248, Oct. 5, 1995]

§212.5 Parole of aliens into the United States.

(a) In determining whether or not aliens who have been or are detained in accordance with §235.3 (b) or (c) will be paroled out of detention, the district director should consider the following:

(1) The parole of aliens who have serious medical conditions in which continued detention would not be appropriate would generally be justified by ''emergent reasons'';

(2) The parole of aliens within the following groups would generally come within the category of aliens for whom the granting of the parole exception would be ''strictly in the public interest'', provided that the aliens present neither a security risk nor a risk of absconding:

(i) Women who have been medically certified as pregnant;

(ii) Aliens who are defined as juveniles in 8 CFR 242.24. The district director shall follow the guidelines set forth in §242.24(b) in determining under what conditions a juvenile should be paroled from detention.

(iii) Aliens who have close family relatives in the United States (parent, spouse, children, or siblings who are United States citizens or lawful permanent resident aliens) who are eligible to file, and have filed, a visa petition on behalf of the detainee;

(iv) Aliens who will be witnesses in proceedings being, or to be, conducted by judicial, administrative, or legislative bodies in the United States;

(v) Aliens whose continued detention is not in the public interest as determined by the district director.

(3) Aliens subject to prosecution in the United States who are needed for the purposes of such prosecution may be paroled to the custody of the appropriate responsible agency or prosecuting authority.

(b) In the cases of all other arriving aliens except those detained under §235.3(b) or (c), and paragraph (a) of this section, the district director in charge of a port of entry may, prior to examination by an immigration officer, or subsequent to such examination and pending a final determination of inadmissibility in accordance with sections 235 and 236 of the Act and this chapter, or after a finding of inadmissibility has been made, parole into the United States temporarily in accordance with section 212(d)(5) of the Act any such alien applicant for admission at such port of entry under such terms and conditions, including those set forth in paragraph (c) of this section, as he may deem appropriate; however, an alien who arrives at a port of entry and applies for parole into the United States for the sole purpose of seeking adjustment of status under section 245A of the Act, without benefit of advance authorization as described in paragraph (e)(2) of this section shall be denied parole and detained for exclusion in accordance with the provisions

of paragraph (b) or (c) of §235.3 of this chapter. An alien seeking to enter the United States for the sole purpose of applying for adjustment of status under section 210 of the Act shall be denied parole and detained for exclusion under paragraph (b) or (c) of §235.3 of this chapter, unless the alien has been recommended for approval of such application for adjustment by a consular officer at an Overseas Processing Office.

(c) *Conditions.* In any case where an alien is paroled under paragraph (a) or (b) of this section, the district director may require reaonable assurances that the alien will appear at all hearings and/or depart the United States when required to do so. Not all factors listed need be present for parole to be exercised. The district director should apply reasonable discretion. The consideration of all relevant factors includes:

(1) The giving of an undertaking by the applicant, counsel, or a sponsor to ensure appearances, and a bond may be exacted on Form I–352 in such amount as the district director may deem appropriate;

(2) Community ties such as close relatives with known addresses; and

(3) Agreement to reasonable conditions (such as periodic reporting of whereabouts).

(d) *Termination of parole*—(1) *Automatic.* Parole shall be automatically terminated without written notice (i) upon the departure from the United States of the alien, or, (ii) if not departed, at the expiration of the time for which parole was authorized, and in the latter case the alien shall be processed in accordance with paragraph (d)(2) of this section except that no written notice shall be required.

(2)(i) *On notice.* In cases not covered by paragraph (d)(1) of this section, upon accomplishment of the purpose for which parole was authorized or when in the opinion of the district director in charge of the area in which the alien is located neither emergency nor public interest warrants the continued presence of the alien in the United States, parole shall be terminated upon written notice to the alien and he or she shall be restored to the status which he or she had at the time of parole. Any further inspection or hearing shall be conducted under section 235 or 236 of the Act and this chapter, or any order of exclusion and deportation previously entered shall be executed. If the exclusion order cannot be executed by deportation within a reasonable time, the alien shall again be released on parole unless in the opinion of the district director the public interest requires that the alien be continued in custody.

(ii) An alien who is granted parole into the United States after enactment of the Immigration Reform and Control Act of 1986 for other than the specific purpose of applying for adjustment of status under section 245A of the Act shall not be permitted to avail him or herself of the privilege of adjustment thereunder. Failure to abide by this provision through making such an application will subject the alien to termination of parole status and institution of proceedings under sections 235 and 236 of the Act without the written notice of termination required by §212.5(d)(2)(i) of this chapter.

(e) *Advance authorization.* When parole is authorized for an alien who will travel to the United States without a visa, the alien shall be issued Form I–512.

(f) *Parole for certain Cuban nationals.* Notwithstanding any other provision respecting parole, the determination whether to release on parole, or to revoke the parole of, a native of Cuba who last came to the United States between April 15, 1980, and October 20, 1980, shall be governed by the terms of §§212.12 and 212.13.

(g) *Effect of parole of Cuban and Haitian nationals.* (1) Except as provided in paragraph (g)(2) of this section, any national of Cuba or Haiti who was paroled into the United States on or after October 10, 1980, shall be considered to have been paroled in the special status for nationals of Cuba or Haiti, referred to in section 501(e)(1) of the Refugee Education Assistance Act of 1980, Public Law 96–422, as amended (8 U.S.C. 1522 note).

(2) A national of Cuba or Haiti shall not be considered to have been paroled in the special status for nationals of Cuba or Haiti, referred to in section

501(e)(1) of the Refugee Education Assistance Act of 1980, Public Law 96–422, as amended, if the individual was paroled into the United States:

(i) In the custody of a Federal, State or local law enforcement or prosecutorial authority, for purposes of criminal prosecution in the United States; or

(ii) Solely to testify as a witness in proceedings before a judicial, administrative, or legislative body in the United States.

[47 FR 30045, July 9, 1982, as amended at 47 FR 46494, Oct. 19, 1982; 52 FR 16194, May 1, 1987; 52 FR 48802, Dec. 28, 1987; 53 FR 17450, May 17, 1988; 61 FR 36611, July 12, 1996]

§212.6 Nonresident alien border crossing cards.

(a) *Use*—(1) *Nonresident alien Canadian border crossing card, Form I–185.* Any Canadian citizen or British subject residing in Canada may use Form I–185 for entry at a United States port of entry.

(2) *Mexican border crossing card, Form I–186 or I–586.* The rightful holder of a nonresident alien Mexican border crossing card, Form I–186 or I–586, may be admitted under §235.1(f) and (g) of this title if found otherwise admissible. However, any alien seeking entry as a visitor for business or pleasure must also present a valid passport and shall be issued Form I–94 if the alien is applying for admission from:

(i) A country other than Mexico or Canada, or

(ii) Canada if the alien has been in a country other than the United States or Canada since leaving Mexico.

(b) *Application.* A citizen of Canada or a British subject residing in Canada must apply on Form I–175 for a nonresident alien border crossing card, supporting his/her application with evidence of Canadian or British citizenship, residence in Canada, and two photographs, size 1½″ x 1½″. Form I–175 must be submitted to an immigration officer at a Canadian border port of entry. A citizen of Mexico must apply on Form I–190 for a nonresident alien border crossing card, supporting his application with evidence of Mexican citizenship and residence, a valid unexpired passport or a valid Mexican Form 13, and one color photograph with a white background. The photograph must be glossy, unretouched and not mounted. Dimension of the facial image must be approximately one inch from chin to top of hair, and the applicant must be shown in ¾ frontal view showing right side of face with right ear visible. Form I–190 must be submitted to an immigration officer at a Mexican border port of entry or to an American consular officer in Mexico, other than one assigned to a consulate situated adjacent to the border between Mexico and the United States; however, Form FS–257 may be used in lieu of Form I–190 when the application is made to an American consular officer. If the application is submitted to an immigration officer, each applicant, regardless of age, must appear in person for an interview concerning eligibility for a nonresident alien border crossing card. If the application is submitted to a consular officer, each applicant, except a child under fourteen years of age, must appear in person for the interview. If the application is denied, the applicant shall be given a notice of denial with the reasons on Form I–180. There is no appeal from the denial but the denial is without prejudice to a subsequent application for a visa or for admission to the United States.

(c) *Validity.* Notwithstanding any expiration dates which may appear thereon, Forms I–185, I–186, and I–586, are valid until revoked or voided.

(d) *Voidance*—(1) *At port of entry.* Forms I–185, I–186 and I–586 may be declared void by a supervisory immigration officer at a port of entry. If the card is declared void, the applicant shall be advised in writing that he/she may request a hearing before an immigration judge to determine his/her admissibility in accordance with part 236 of this chapter and may be represented at this hearing by an attorney of his/her own choice at no expense to the Government. He/she shall also be advised of the availability of free legal services programs qualified under part 292a of this chapter and organizations recognized under §292.2 of this chapter, located in the district where the exclusion hearing is to be held. If the applicant requests a hearing, Forms I–185, I–186 and I–586 shall be held at the port of